

US Patent Application 10/193,838

**Remark:**

Independent claim 40 is rejected under 35 U.S.C. 103(a) in view over Spackova et al. For step (1) of claim 40, the office action indicated that the indicia segments 72 of Spackova represent the m different physical dimensional parameters claimed. The office action failed to specify where the definition of indicia segment is located in the Spackova reference. With the best effort provided, the applicant assumes the office action refers to col. 4 lines 1-9 of Spackova. According to the specification of Spackova, the terms "segment" and "indicia" are two different terms having different meanings. Each segment contains a "coded indicia" (col. 4 lines 4-5). It is unclear if the office action refers the segment, or the indicia to be interpreted as the physical dimensional parameters claimed. Further clarification is respectfully requested. Furthermore, it is very obvious to a person having ordinary skill in the art that both the terms "segment" or "indicia" cannot be used to represent the physical dimensional parameters claimed. As recited in the specification of the subject application, each physical dimensional parameters has a name such as shoulder width, arm length....waist dimension to define a specific dimensional measurement of a body. On the contrast, the "segment" of Spackova merely represents a "pixel" of a picture and each indicia indicates the orientation and position of each pixel. All the pixels or segments of Spackova are identical in nature until they are combined to form a visual image of the garment. Accordingly when the specification of Spackova is studied as as whole, as required by the patent rules, the pixel (segment) of Spackova has no specific meaning in body measurement parameters as defined in the subject specification as it is a completely different term, provided for completely different function. For step (2) claimed, the indicia of Spackova measures the coordinates and orientation of the triangles 74 (FIG. 3 and col. 4 lines 1-9). Firstly the indicia of Spackova failed to measure the dimension of the parameter (if the segment is interpreted as the parameter claimed) of step (2). Secondly, if the indicia of Spackova is interpreted to represent the physical dimensional size of the segment, the design of Spackova will fail to work properly. For step (3) claimed, in col. 4 lines 57 quoted by the office action, Spackova explicitly indicated that the 5-6 bits encodes the "triangle color" and the "intensity of color" of each segment or pixel and not the coordinate or orientation (the values of each parameter in step (2)). Accordingly it is very obvious that the color encoding process is a completely different matter as compared with the process of step (3) claimed, that the functions of the digital

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codes in Spackova and the subject application are interchanged, both design will failed to work properly. Physical dimensional encoding will fail to provide color data to the Spackova design and color encoding without dimensional information will fail to satisfy the BP Code system design.

According to 37 CFR 1.104 (b), the office action should be "complete" to clearly identify how each limitation of the subject claim is read on the reference. The office action further refers the feature of compressed code as an old expedient in the art without providing the motive how the disclosure of Spackova is looking for a compression process as claimed, for a rejection under 35 U.S.C. 103(a) to be properly supported.

Listed below is a quotation of a precedent court case *In re Sun*, 31 USPQ 2d 1451, 1455 (Fed. Cir. 1993),

*Finally, appellants seemingly argue that the examiner's lack of citation to support the asserted level of skill in the art makes the rejections improper per se. This is so, appellants suggest, because without such citation, there is no record by which they can argue that the examiner erred.*

The following is a quotation from 37 C.F.R. 1.107(b):

*When a rejection in an application is based on facts within the personal knowledge of an employee of the Office, the data shall be as specific as possible, and the reference must be supported, when called for by the applicant, by the affidavit of such employee, and such affidavit shall be subject to contradiction or explanation by the affidavits of the applicant and other persons.*

Accordingly, applicant courteously requested that if the rejection is maintained, the examiner provides an affidavit under 37 C.F.R. 1.107 (b) providing citation regarding level of skill in the art and why it is appropriate to take the "Official Notice" stated.

The examiner is also respectfully requested to particularly clarify or identify the support of the following questions and assertions:

(a) If the "segment" or the "indicia" of Spackova represents the physical parameter claimed?

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- (b) If the "segment" is interpreted to be a parameter, then how the indicia of Spackova representing the coordinate and orientation can be interpreted as a dimensional measurement of said body as specified and claimed?
- (c) How the color encoding process of Spackova can be interpreted as a compression process to encoded the dimensional measured values claimed?
- (d) Where in the disclosure of Spackova we can locate the motive or desire of applying a compression process to encode all the physical dimensional parameters measured?
- (e) The examiner is also requested to provide cited reference or an affidavit under 37 C.F.R. 1.107 (b) about the feature of compressed code taken in the official notice.

Claims 40, 6-18, 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spackova in view of Powell. First of all, the office action failed to explain how the reference of Powell is related to the claim limitation of claim 40. Rejection of claim 40 under this assertion is respectfully requested to be withdrawn.

For claim 6, the applicant carefully read Col. 9 line 9-17 of Powell as indicated by the office action and found that the N1 and N2 numbers merely represents the addresses of two different networks. The applicant also failed to locate the tags 12 as indicated in page 3, line 16 of the office action. The office action also failed to precisely indicate where in Powell, the n1 and n2 data bits can be combined to form one single BP code as claimed in claim 6? Concerning motivation, the office action indicated that the efficient movement of small items of data through the system without the need of cumbersome definitions provides grounds of motivation. The applicant is completely lost by this assertion. The examiner is respectfully requested to clarify what are the small items of data as indicated in the subject application? What are the cumbersome definitions found in the subject application? How these small items of data can be efficiently moved? And how the cited reference is able to motivate a person having general knowledge in the art without first reading the disclosure of the subject application which aimed to provide a portable code that can be easily utilized to support garment shopping.

For claims 6-12, 15-18, 49, the office action merely indicates these claims are not patentable features without indicating why they are not patentable? The limitations recited in most of these claims were not examined nor compared with the prior arts cited.

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By carefully reading the subject specification, each of claims 6-12, 15-18, 49 contributes to improvements of the PB Code systems and therefore they are patentable features. For example, without the characteristic of claim 7 or claim 49, the BP Code system invented will not be able to interface with size charts currently used by different fashion retailers in the market. Furthermore, if these claims are not patentable features, they should be rejected under 35 U.S.C. 101 instead of 35 U.S.C. 103, and supported with examination rules related to 35 U.S.C. 101 as indicated in the MPEP.

In addition, the applicant respectfully wishes to emphasize that elected claim 49 depends on claim 1, which further depends on independent claim 40. Accordingly claim 1 should not be withdrawn in the examination process.

According to 37 CFR 1.104 (b), the office action should be "complete" to clearly identify how each limitation of the subject claims is read on the reference. The examiner is respectfully requested to provide in the next office action:

- (a) Precisely how the limitations of each claim is read on the cited references?
- (b) Precisely indicate the column and line number of the cited reference how the claimed feature is disclosed; and interpreted?

Since claim 1, the parent claim of elected claim 49 had not be examined, the next office action is respectfully requested not to be set to final. Finally, the examiner is respectfully requested to reference the allowable claims of the parent application 10/193,838 pending issue.

(End of remark)